



MINUTES
BOARD OF ADJUSTMENT CITY OF MISSOURI CITY, TEXAS

January 30, 2019

The Notice of Meeting and Agenda having been duly posted in accordance with legal requirements and a quorum being present, the meeting was called to order by Vice Chairman Workman approximately 6:08 p.m.

ATTENDEES:

Board Members Present:

Joe Workman
J.R. Atkins (alternate)
Adrian Matteucci (alternate)
Sharon Jurica (alternate)

Board Member Absent:

Roger Morris, Robin Elackatt, Cleotha Aldridge, James Bailey

STAFF PRESENT:

Otis Spriggs, Director of Development Services
Jamilah Way, First Assistant City Attorney
Thomas White, Planner II
Mason Garcia, Planner I
Egima Brown, Planning Technician

Others Present:

Gorman W. (Bill) Prince, Jr, Daryl L. Smith, Sandra Webber Fullerton / Attorney, Jim Adams / Attorney

READING OF MINUTES:

Vice Chair Workman called for any corrections or additions to the October 3, 2018, meeting minutes.

Motion: Approval of the October 3, 2018, meeting minutes.

Made By: Board Member Atkins

Second: Board Member Jurica

AYES: Board Member Workman, Board Member Jurica,
Board Member Atkins

NAYS: None

ABSTENTIONS: Board Member Matteucci

The motion passed.

REPORTS:

A. BOARD MEMBERS

None.

B. STAFF REPORTS

(1) Development Services

a. Director – Otis T. Spriggs

Mr. Spriggs informed that Development Services did not have any reports. However, Jamilah Way, First Assistant City Attorney, would provide a brief synopsis of things to come from a legal and educational stand point.

Jamilah Way, First Assistant City Attorney, informed that the plan for next month would be to go over refreshers, different standards and rules for the Board of Adjustment, special exceptions, appeals and variance requests. Rules would also be discussed with suggestions. Ms. Way informed that if the Board wanted to make changes, they would be able to do so during the next meeting.

Board Member Atkins asked when the meeting would take place.

Ms. Way informed that it would be scheduled for next month. Staff will contact the Board with a suggested date.

Mr. Spriggs asked the board to speak their names first when providing information and comments for staff to identify the speaker when recording.

PUBLIC COMMENTS

There were none.

AGENDA ITEM FOR CONSIDERATION

- A.** To receive comments for or against a request by Gorman W. Prince Jr. to obtain a variance from Section 7.2.C.4 of the City's Zoning Ordinance pertaining to a side yard. The subject site is located at 2502 Stillwell Street, Missouri City, Texas 77489

Mr. Spriggs presented this item. Mr. Spriggs informed that there would be a brief staff summery of the case facts, the applicant would provide information on the application and then the public would be able to provide comments on the particular hearing. Mr. Spriggs presented the case variance #1800005, for the property located at 2502 Stillwell Street. The applicant was requesting a variance of the zoning code, particularly Section 7.2.C.4, in which the zoning ordinance does require 5 ft. in the given side yard. The discussion would be on the side yard setback.

Mr. Spriggs presented the vicinity map of the property. To provide the location of the property, Wells Fargo is on the corner of Texas Parkway and Court Street, which the site located south of that property at the corner of Stillwell Street and Court Street on the

southwest corner. Adjacent to the 2502 Stillwell Street property, the Bradford Village subdivision to the west and southwest of the site. Flicker Road is south. Mr. Spriggs informed that Missouri City Forestation #3 is to the immediate east to across the street from the site.

Mr. Spriggs informed that the Board had the staff report according to the authority granted by the Texas Local Government and Code, as well as the City's Code of Ordinances. The Board is authorized to see and hear specific cases on variances on the terms of the Zoning Ordinances, in which the variances is not contrary to the public interest. And due to special conditions, literal enforcement of the ordinances would result in unnecessary hardship and so that the spirit of the ordinance is observed and substantial justice is done.

Mr. Spriggs informed that section 7.2.C.4. was the section that was applied, which staff would use to review single family lots to ensure that they are in compliance with the setback requirements. With the mentioned site being a corner lot situation, fronting on two streets, the applicant was required to keep the proposed garage at least 20 ft. from the Court Street yard side. Typically on the interior streets the side yard setback is 5 ft. Staff tries to retain a distance between structures of 10 ft., which is pretty typical for most single family districts in terms of the minimum setback.

Mr. Spriggs informed that the applicant did apply for a permit to erect such garage on the property. The details of the case specifics would be discussed.

Mr. Spriggs presented the timeline the staff report. The photographs and documents would be presented for consideration. On or about December 4, 2015, the permit was applied for, as submitted by Mr. Prince to construct the 4,443 square foot garage on the subject location. On December 21st, City staff typically would have reviewed those plans and applications and notify the applicant of any comments. Mr. Spriggs informed that in this case staff disapproved the plans due to some issues of the rear yard encroaching on the required setback of 8 ft., which was the western property line. On or about January 5th, the applicant resubmitted the plans to comply with the setback requirement. Staff reviewed and completed the review of the revised plans and issued an approval. Around January 12th, 2016, staff indicated that the location of the garage had to be adjusted as stated on the western line to meet the City Ordinance in terms of the rear yard setback.

Vice Chair Workman asked staff for clarification of the back and side yard discussion.

Mr. Spriggs informed that it was the back of the building and that it was shifted at that particular time in the terms of the drawings.

Mr. Spriggs informed that on or around February 2016, staff conducted routine inspections on the garage.

Mr. Spriggs presented evidence and photographs in which the form survey was approved September 7, 2016. The Certificate of Completion was approved on September 25, 2017. The facts were taken from the system where all the permits and inspections are kept. Staff was able to utilize the system to retrieve the dates of the inspections. Staff also coordinated with the green cards that were submitted with the application. Mr. Spriggs informed that the particular drawings presented were submitted by the applicant. Staff was not saying that the designations or the information written on the presented items was not done by staff and wanted to make that clear.

Mr. Spriggs informed that what the applicant had presented was some of the form surveys

done prior to the building being erected. The applicant was trying to demonstrate the fact that the forms were set on the property according to a site plan that was submitted to maintain 5 ft. on the side and the 8 ft. on the rear. When they went to set the forms, they were having trouble trying to square the building due to the property not being a true square. Mr. Spriggs informed that sometimes there could be a trapezoid in which the angles of the property might be skewed. Therefore it may be not be possible to square off of a foundation as it was in this particular case. The items presented were also provided to the board, along with the application.

Mr. Spriggs presented the inspection cards that the applicant submitted. It is typical for staff to leave the cards on site after inspections. When the final was completed, backing up to plumbing, framing, or any type of ground cover of electrical work, there would be a pass or fail.

Mr. Spriggs informed that in terms of other timeline information, in January 2018, staff received a formal complaint regarding the neighbor indicating that the garage did not meet the 5 ft. setback as described. The complaint asked that staff address the issue during that particular time. On September 25th, the neighbor filed an official and formal written complaint claiming that the garage was 1.5 ft. closer to the property line in question, which would be considered the sideline or the southern property line.

Mr. Spriggs presented photographs of which staff initiated a site visit after that particular point. The Code Enforcement and Building Departments visited the site to conduct a visual of the site. As far as staff was able to see in terms of what stakes were at the site and where the building actually sat. It was obvious that there was some encroachment into the 5 ft. yard setback requirements. It was based off the property stakes that were present in proximity to the existing fence that could be seen along the southern property line.

Mr. Spriggs presented photographs of which the applicant supplied that was provided to the Board. A photograph showed the side yard in question and the fact that there were some possible encroachment into that area. The applicant submitted a revised survey dated September 18, 2018, which the Board was copied on. Mr. Spriggs informed that it showed the approximate distance from the building to the property line to be 4.6 ft. to 4.8 ft. Mr. Spriggs presented the submitted survey showing the measurements by the applicant, as well as a blow up that showed the fact the measurement was 4.8 ft. or so towards the rear corner and 4.6 ft. from the property line on the front side corner.

Mr. Spriggs informed that submitted to staff by the neighbor was a survey around February of 2018. It showed a greater variation of the distance that was stated. The survey showed 3.5 ft. to 3.8 ft. to the southern property line. Mr. Spriggs informed that the board was copied on the survey. An enlargement of the survey showed the distance of 3.8 ft. and the rear 3.5 ft., which was a maximum of about 1.5 ft. It is not typical that two surveyors would have a different indication of a survey when there are points of beginnings or markers. However, there was a discrepancy obviously from the two surveyors.

Mr. Spriggs informed that discussion is the side yard setback and the general case facts that were presented in the staff report. The testimonies were now ready to be heard. Legal was present to assist with the process. There were parties in the audience that wanted to address the Board.

Jim Adams, Attorney representing Gorman W. Prince Jr. (Bill), informed that Mr. Prince Jr. was the applicant in the matter. Mr. Adams informed that he wanted to enter into a question and answer with Mr. Prince Jr. in order to present his case.

Vice Chair Workman asked the Board if they had any comments.

Board Member Jurica replied, "Not at this time".

Vice Chair Workman informed that the Board did not have any questions or comments at the time. It was obvious of what took place, as far as the building not being exactly 4 ft.

Mr. Adams asked the Board if they could present their side of the story.

Vice Chair Workman replied, "Sure".

Mr. Adams asked Mr. Prince Jr., "When you decided to purchase and build the building, did you contact the officials with Missouri City in order to obtain the necessary permits?"

Gorman W. (Bill) Prince Jr. replied, "Yes I did".

Mr. Adams asked Mr. Prince Jr., "How many departments did you talk to?"

Mr. Prince replied, "Several starting with Mr. Jose Abraham in January of 2015. He was a City Planner."

Mr. Adams asked Mr. Prince Jr., "Did you follow his instructions to a "T" in regard to how to obtain a permit?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked, "What did that consist of?"

Mr. Prince Jr. replied, "Mainly they/we learned the setbacks were required, the height, the slope of the roof, the type of construction and the wind loading I think was 110 mph / 5 second wind burst."

Mr. Adams asked Mr. Prince Jr., "Did you make sure that all of your plans complied with all those requirements by the City?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "And you submitted all of those plans to the City, correct?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "And all of them were approved by the City, correct?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "During the construction of the facility, the sent Building Inspectors out there, correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "According to the green cards, four times they were out there and they indicated that they inspected and approved everything, correct?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "When you started building, were there any question what so ever that you were not in compliance with the City Code in regard to the property?"

Mr. Prince Jr. replied, "No."

Mr. Adams asked Mr. Prince Jr., "At what time did you realize that there might be a problem?"

Mr. Prince Jr. replied, "When we were setting the forms for the foundation."

Mr. Adams asked Mr. Prince Jr., "What was it that you found to be a problem?"

Mr. Prince Jr. replied, "We were not able to get the forms squared to have the setbacks. Then we discovered that the land wasn't exactly squared."

Mr. Adams asked Mr. Prince Jr., "What did that mean in terms of you building in the code?"

Mr. Prince Jr. replied, "Well one dimension of the property line is 120 ft. So one requirement on the north side was a 20 ft. setback and on the side we talking about now is 5 ft. So when you take 120 minus 20, minus 5, we have a 95 ft. long building. That's what we did, but the problem is the interior angles of the land are not exactly 90 degrees, then something has to give. At that point we had already had the steal fabricated."

Mr. Adams asked Mr. Prince Jr., "You already laid the steal for the foundation. Is that correct?"

Mr. Prince Jr. replied, "We had the steal fabricated for the building at that point."

Mr. Adams asked Mr. Prince Jr., "Once you found out this problem, did you go to the City to talk to anybody about it?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "Who did you talk to?"

Mr. Prince Jr. replied, "Mr. Kirk Allen."

Mr. Adams asked Mr. Prince Jr., "What was his position?"

Mr. Prince Jr. replied, "He felt that it was an innocent mistake..."

Mr. Adams interrupted and asked Mr. Prince Jr., "What is his position with the City?"

Mr. Prince Jr. replied, "His position was that it was allowed."

Mr. Adams asked Mr. Prince Jr., "No, what is his job with the City?"

Mr. Prince Jr. replied, "I'm sorry. Chief Inspector."

Mr. Adams asked Mr. Prince Jr. to share the advice and opinion to regard of the matter from Mr. Kirk Allen.

Mr. Prince Jr. informed, "He said he would allow it. It was a just a few inches. It was not intentional. There are no utilities underground and overhead in that area. It is a rural residential area so he allowed it."

Mr. Adams asked Mr. Prince Jr., "When was this? In '16 or '17?"
Mr. Prince Jr., replied, "In '16."

Mr. Adams asked Mr. Prince Jr., "Did he ever suggest to you that you apply for a variance?"

Mr. Prince Jr., replied, "No."

Mr. Adams asked Mr. Prince Jr., "Did you have any idea that you could apply for a variance at that time?"

Mr. Prince Jr. replied, "No."

Mr. Adams asked Mr. Prince Jr., "So based on his approval, you completed the building. Is that correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "Approximately how much did that building cost to erect?"

Mr. Prince Jr. replied, "Everything, probable \$120,000.00."

Mr. Adams asked Mr. Prince Jr., "You use it as a garage, correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "Now, I looked at those figures and there's some questions as to whether it's 6 inches or... You indicate that at one corner, it's less than 2.4 inches and the other one is less than 4.8 inches. Is that correct?"

Mr. Prince Jr. replied, "Yes, 4 ft., 8 inches."

Mr. Adams asked Mr. Prince Jr., "How did you come up with your numbers?"

Mr. Prince Jr. replied, "That was from my surveyor."

Mr. Adams asked Mr. Prince Jr., "So regardless, we talking about a distance of less than a foot. Is that correct?"

Mr. Prince Jr. replied, "Yes, less than 6 inches actually."

Mr. Adams asked Mr. Prince Jr., "Have you considered what it would take to make this in compliance with the 5 ft. rule?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "What is it going to take?"

Mr. Prince Jr. replied, "I'm not sure if it's possible. We have steel beams, because of the wind loading requirements, that are set with anchor bolts 18 inches into 2 ft. by 1 ft. concrete beams in the ground. I'm not sure how you would move that. It's not like a wood structure we're just gonna saw."

Mr. Adams asked Mr. Prince Jr., "So assuming you were able to move it so to speak, do you have any idea how much that would cost?"

Mr. Prince Jr. replied, "\$40 to \$50,000."

Mr. Adams asked Mr. Prince Jr., "If it's possible at all, correct?"

Mr. Prince Jr. replied, "If it's possible."

Mr. Adams asked Mr. Prince Jr., "You agree that it would cause a very great hardship for you if you had to try to comply with this 5 ft. requirement, correct?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "Do you feel like there is any damage or impediment to any of the landowners out there because of where it situated?"

Mr. Prince Jr. replied, "No."

Mr. Adams asked Mr. Prince Jr., "Why is that?"

Mr. Prince Jr. replied, "First of all it's a rural residential area. There are no HOAs or deed restrictions. Actually had a neighbor who has livestock, which is allowed. The building is metal, so it's fire proof. And there is no utilities there. And it's still close to the 5 ft. It's not like it's 1 foot. I can't imagine why it would be an issue to anyone in the neighborhood."

Mr. Adams asked Mr. Prince Jr., "And why do you believe that this would be in consistent with the spirit of the Zoning Ordinance and in the public's interest?"

Mr. Prince Jr. replied, "Well basically it's still the 5 ft. modification is just an arbitrary number to begin with. The City had to have some requirements. Not sure how they came up with it. I am very close to that. And it was my intention to meet it. That's why I had all the meeting for three years with the City to make sure I was doing everything correct."

Mr. Adams asked Mr. Prince Jr. "Is the fact that it is 6 inches or less closer to your neighbor's fence, does that in any way cause him any harm?"

Mr. Prince Jr. replied, "No."

Mr. Adams asked Mr. Prince Jr., "You complied with all the permits, correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "You passed all the inspections, correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "You did everything that the City asked you to do, correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "Mr. Lynch was it, Kirk..?"

Mr. Prince Jr. replied, "Mr. Allen."

Mr. Adams asked Mr. Prince Jr., "Mr. Allen, he told you that he would accept it, to go forward with it even though it did not comply and did not tell you about this variance process. Correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "Had he told you that there's a possibility that there could be a problem somewhere down the road, where somebody would raise the issue that's not 5 ft. would you have gone forward with the construction of the building?"

Mr. Prince Jr. replied, "No."

Mr. Adams asked Mr. Prince Jr., "So in the reliance upon, what did you say? The Chief Building Inspector?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams asked Mr. Prince Jr., "In reliance upon his assurances, you went ahead spent substantial amount of money thinking that you are in compliance with the City's requirements. Is that correct?"

Mr. Prince Jr. replied, "Correct."

Mr. Adams asked Mr. Prince Jr., "And are you asking them to grant your application for a variance?"

Mr. Prince Jr. replied, "Yes."

Mr. Adams informed that that was all that he had.

Ms. Way informed that she needed clarification.

Ms. Way asked Mr. Adams and Mr. Prince Jr., "Are you all asking for a maximum of 1.5 foot or a few inches? How much are you asking the Board for your variance?"

Mr. Prince Jr. replied, "I think the maximum is, by our survey we have had it surveyed multiple times by a licensed surveyor with satellite technology. And I think it's 4.8 inches is the maximum. One side is 2.5 or something like that"

Mr. Adams replied, "2.8."

Mr. Prince Jr. replied, "Ok."

Mr. Adams replied, "2.4..."

Mr. Prince Jr. replied, "2.4 on one side of the building and the maximum is 4.8 inches."

Mr. Adams replied, "It's half a foot or less."

Vice Chair Workman asked, "You mentioned that it had been surveyed. How was it surveyed?"

Mr. Adams replied, "Which time?"

Vice Chair Workman asked, "How is it possible that two surveys came out a little different?"

Mr. Adams informed Mr. Prince Jr. to inform the Board about the stakes.

Mr. Prince Jr. replied, "I'm not sure. I know that I have 20 ft. of my property, as per the plat that was done, on that west side is 120 ft. The building, which the plans were approved by the City is 95 ft. So I have the 20 ft, the 95, so I can't be short there or my land is not..."

Mr. Adams informed Mr. Prince Jr. that Vice Chair Workman was asking about how the two surveys were different. It was his understanding from Mr. Prince Jr. that the stakes were not placed or read properly.

Mr. Adams asked Mr. Prince Jr., "What was that discovered with the last inspection?"

Mr. Prince Jr. replied, "There were two, there were initially two surveys that did not agree. An old one that was done when I purchased the property in 2007 and a new one that was

done for the plat. They didn't match. So what happened was, they actually did match on paper. But out on the property, the stakes on one end were correct on the east end. But on the west end, they were different locations. And one of the locations of the old surveyor's stake had been moved. That's what they told me. And on the other side that stake wasn't even their stake. So that was the issue, one of the issues we had with the survey. It turned out the old survey, by a US surveyor and a new one by Greenleaf, they did actually agree. They did match. But the stakes were incorrect, it took us a while to figure that out."

Vice Chair Workman informed that his concern was the request of a 6 inch variance. If it came back that there was another survey that was done by Mr. Prince Jr.'s neighbor that it was more like a foot and a half, would the Board be leaving themselves open to Mr. Prince Jr. having another problem at a later date for another variance.

Mr. Prince Jr. asked, "For asking for a greater distance?"

Vice Chair Workman replied, "Right."

Mr. Adams informed that it was his understanding that it had been in litigation. There was an agreement upon the surveyors getting together. Mr. Adams informed that the survey that was presented was the belief of being the one that everyone agreed upon. They did not anticipate on any additional surveys.

Mr. Prince Jr. informed that it was his understanding that the neighbor's surveyor and his surveyor met and agreed. What he saw presently was different.

Vice Chair Workman informed that the agreed upon distance was out of compliant.

Mr. Adams replied, "In agreement with the survey, the final survey that's been done within the last six months?"

Mr. Prince Jr. replied, "Yes."

Board Member Sharon Jurica informed that she saw two surveys in her package. One showed a foot in a half difference and the other only a 6 inch difference. Member Jurica asked how she could make a determination when she had two legal documents that are not identical. If he, Mr. Prince Jr., asked for a variance of a foot in a half, he would be going by his neighbor's survey. If he is was asking for the inches, Mr. Prince Jr. would be going by his survey that he paid a surveyor to do. The other gentleman paid another surveyor.

Mr. Adams asked what the dates were on the surveys. It was in litigation to agree upon the two surveyors to get together. It was Mr. Adams understanding that there was another survey.

Member Jurica informed that the dates were February 2018, by Jones | Carter, which mentioned that there was over a foot in half problem.

Mr. Spriggs informed that there was a September 2017 survey.

Member Jurica located the September 17, 2018 survey.

Mr. Adams informed that that was the one that resulted from the previous litigation. He understood that that was the one that was accepted. They thought the best way to figure it out was to have the two surveyors together and they come up with one.

Member Jurica informed that if that was the case, there was a 1.5 ft difference.

Mr. Prince Jr. replied, "My survey that has..."

Ms. Way asked Vice Chair Workman if she could explain how the variance would work.

Vice Chair Workman accepted.

Ms. Way informed that the variance was just allowing if the Board were to grant the variance, the only thing that it would allow that the property is allowed to exceed 1.5 foot. It had no bearing on the legal dispute about what the boundary is, other than being allowed to vary from the ordinance 1.5 foot. Ms. Way informed that that was the legal effect of granting a variance at a higher rate.

Ms. Way informed that the opposite effect with the inches was that it could exceed the ordinance no more than a few inches. That was the only thing that the variance was addressing.

Vice Chair Workman informed that what was being said was that the final survey was September 17th, but the neighbor's survey submittal was on the 25th that showed 1.5 ft.

Mr. Prince Jr. informed that his survey was accepted by the City and the County on his plat. He had to have the property platted before he could build anything. That was the one that was official.

Mr. Adams informed that what Vice Chair Workman was speaking about was the litigation, the two surveyors met and prepare a survey. It was his understanding that the survey in September was the one that they agreed upon. Mr. Adams informed that he did not know who provided the additional survey.

Mr. Prince Jr. informed that his surveyor and his neighbor's surveyor met and agreed upon the one that had the inches. Subsequent to that, it was news to him that there was another survey.

Mr. Spriggs suggested that the other testimonies were heard and then draw conclusions from both sides.

Sandra Fullerton, Attorney to Daryl Smith, informed that Daryl Smith opposed Mr. Prince Jr.'s application for a variance. Written response was submitted to Mr. Spriggs, City Council and the City's Attorney's Office. Ms. Fullerton informed that there was a lot more in dispute than a few inches that were being raised for the variance. As she understood, the zoning was an R-1 Family Residential District. The building that was being loosely referred to as a garage, was a commercial building that Mr. Prince was using to restore cars for a business.

Ms. Fullerton presented photographs that showed the residence that had been located on the property for some 20 plus years. It also showed where it was positioned in regards to the garage. First photo of the residence as it appeared from the street. The second photo showed the garage positioned on the right side, the larger building, with the residence in front. Ms. Fullerton informed that by how the ordinance specified what should and should not be positioned on single family residential property, the house looked like an accessory in comparison to the garage.

Ms. Fullerton informed that she believed that there had been a misrepresentation in the whole process in how the building was erected, proved to be erected and the positioning on the land.

Ms. Fullerton began to inform about additional complaints. Vice Chair Workman paused the testimony.

Vice Chair Workman informed that he understood that there might have been other problems and asked if it was just a request about the size of the building, and exactly where it is positioned, or other issues.

Ms. Fullerton informed that there were other issues.

Vice Chair Workman informed that he understood that there were other issues. The

purpose of the current variance request is to position the building and to see if it was correct to the side yard.

Ms. Fullerton informed that her point was a history and a pattern of Mr. Prince manipulating the process to get what he needed to carry on the commercial business. If Mr. Prince Jr. was to receive the variance, then every other step that he accomplished in violation of the ordinance was there by sealed. Then there would be no violations.

Ms. Fullerton informed that Mr. Prince Jr. manipulated the system to get the permits, to get the building erected, and was now asking for a variance to leave the structure on the property positioned where it is. Positioned where it is, there is a vent on the garage, as it is called.

Ms. Fullerton presented a photograph of the vent.

Ms. Fullerton informed that when he, Mr. Prince Jr., is blasting and performing other activities in restoring the cars, allows fowl and offensive orders to emit directly from the building directly onto Mr. Smith's property. That too is a violation of the ordinance. Ms. Fullerton informed that what was being seen was going to be ongoing and never ending. Unless the Board took some position to prevent it from happening, then what would it say to the other residents of Missouri City. There is an ordinance but the Board arbitrarily apply the ordinance and allow certain people to do certain things to the detriment of other citizens.

Ms. Fullerton informed that in regards to the surveys and the litigations that occurred...

Ms. Fullerton paused to inform that she had documents of the litigations.

Ms. Fullerton continued and informed that Mr. Prince Jr. went as far as to sue Mr. Smith to have him move his fence, so that the building would then be in compliance. Mr. Prince Jr's surveyor did appear and stated that he surveyed the entire community and redrew the lines for all the properties. Ms. Fullerton informed that it would be a big problem, other than just being an improper for all the residence of that community if that was allowed to occur.

Ms. Fullerton informed that they agreed on the two surveyors meeting. Mr. Smith had about four surveys completed and spent about \$2,000. All of the surveys came out to be the same. The surveyors met. They did not get back to court because the surveyors agreed that Mr. Smith's surveyor was accurate. They dismissed the lawsuit. Ms. Fullerton informed that now Mr. Prince Jr. was seeking a variance. They, Mr. Smith and Ms. Fullerton, were opposed and asked that the Board deny the variance. At the very least, they are asking that the Board postponed making a determination until other information was received. It would allow the Board to make an informed decision opposed to hearing just the position of the parties. As they, Mr. Smith and Ms. Fullerton, maintained what had been presented prior to them stepping forward and speaking their position, was not accurate.

Vice Chair Workman informed that he was receiving conflicting information. Mr. Prince Jr. stated that it was rural residential.

Mr. Spriggs informed that the property is zoned R-1 Single Family.

Vice Chair Workman asked if it had always been zoned that way.

Mr. Spriggs replied, "Yes." Staff has the history in terms of the date of the rezoning which showed the original zoning of the property, based on the history.

Vice Chair Workman informed that they could not question what the prior City Council, Adjustment Boards, and prior Planning Commissions had agreed to.

Mr. Spriggs informed that he did not think that there were any question on the zoning district. Staff knows what it is and the application came in as a garage.

Vice Chair Workman informed as Ms. Fullerton pointed out, there were violations all over the place.

Ms. Way informed that she needed to remind the Board that there may be a proper venue for other violations that were not on the agenda. The only current consideration was the presented variance. All the other issues had a time and a place for them to be presented, and that it was not the current venue for the additional issues. Ms. Way informed that the Board may consider any evidence that related to the standard of the variance and nothing more.

Ms. Way informed that the use was not an issue due to properly stating that it is an issue for City Council. It is not an issue for the Board of Adjustments. If there were violations, it is a Code issue. The request presented was for a variance.

Member Jurica asked Mr. Smith, "When the structure was first going up, did you get out there with a measuring tape since you don't have an HOA?"

Mr. Smith replied, "Yes ma'am."

Daryl Smith, neighbor, introduced himself.

Mr. Smith informed that before the building went up, he spoke with Mr. Prince Jr. and told him that he did not have the footage. Mr. Prince Jr. told Mr. Smith that he was going to erect the building. Mr. Smith informed that Mr. Prince Jr. stated that he already bought the building and that he was going to put it up. He, Mr. Prince Jr., had a surveyor that stated that his, Mr. Smith, fence was not where it was not located properly. They, Mr. Prince Jr. and his surveyor, could not put their fence up. Mr. Smith informed the Board that he had proof from his surveyor.

Mr. Smith informed that Mr. Prince Jr. showed him a plat that they had. Mr. Smith informed Mr. Prince Jr. that he could not go per his fence due to it being slanted inward. One day Mr. Smith arrived home and informed that they were on his property.

Mr. Smith informed that he had been in his home since 2001. He had his property surveyed twice. In the midst of the issue, he had the survey completed three more times. Mr. Smith informed that he could provide his surveyor's name and he could confirm what Mr. Smith's statement.

Mr. Smith informed that when Mr. Prince Jr. began to erect the building, he told him again that it was too close. Mr. Smith was running for Constable during that time and did not have time to keep complaining. He, Mr. Smith, thought that the City was going to respond accordingly.

Mr. Smith informed that once the building was erected, he informed Mr. Prince Jr. that the vent was blowing, all the exhaust and everything, over his home. It could be smelled throughout the area. They, Mr. Prince Jr, would open the door a foot and half and the vent fan would blow everything onto Mr. Smith's property. The exhaust could be smelled when the cars were running.

Mr. Smith informed that Mr. Prince Jr., tried to place a decorative fence attached to his fence. Mr. Smith told Mr. Prince Jr. that it was too close and it could not be done. The building should not have been erected. Mr. Smith informed that he had been in contact with the City on the matter.

Mr. Smith informed that he was served papers due to Mr. Prince Jr. suing him for his fence is a foot on Mr. Prince Jr's property. Mr. Prince Jr. wanted him to tear his fence down, so that he could have the allowed distance. He already knew that he did not have the distance because he, Mr. Prince Jr. and the City has proof that he was 5 ft. from his fence. Mr. Smith informed that he had spoken to Mr. Spriggs about the matter and it was not being presented.

Member Jurica asked Mr. Prince Jr., "Do you live in the house sir?"

Mr. Prince Jr. replied, "No."
Mr. Adams replied, "It's not a house."

Mr. Prince Jr., asked, "The house that's next to it?"

Member Jurica replied, "The house that is on your property."

Mr. Prince Jr. replied, "No."

Member Jurica repeated the question, "You don't live there."

Mr. Prince Jr. replied, "No."

Mr. Smith informed that Ms. Miller is a resident in the home on Mr. Prince's property and could testify; however, Mr. Prince Jr. had threatened Ms. Miller by stating that he would put her out if she testified. Mr. Smith had a campaign sign in Ms. Miller's yard and Mr. Prince Jr. was upset with him. Mr. Prince Jr. grabbed his campaign sign. He informed Mr. Prince Jr. that he had permission to place his sign in the yard.

Member Jurica paused the testimony and informed that the Board understood.

Mr. Smith informed that the whole point was from the beginning, Mr. Prince Jr. had provided false information. He had spoken to Mr. Spriggs from that time and provided three different surveys. The last time the judge told them, Mr. Prince Jr., to go ahead and have one surveyor. Mr. Smith informed that Mr. Prince Jr. provided a change of date on the survey that was presented. Mr. Smith informed that Mr. Prince Jr. did not have an additional survey completed.

Mr. Smith informed that he had a survey that showed that from the beginning, it was shown to Mr. Prince Jr. that he did not have enough distance to erect the building on the property. Each one of the properties is 120 ft. x 360 ft. and are squared. He had the original documents that showed each lot as being 120 ft. x 363 ft. Mr. Smith informed that there was not any discrepancy about his fence being on his property.

Mr. Smith informed that he had spent over \$2,000 on surveys and proving what he was stating. He went to the City and the City stated that due to the litigations, the City was not able to respond to the matter. After the litigation, Mr. Smith informed that he informed the City about the fence and everything else. Mr. Prince, Jr. knew from the beginning that the building was in violation.

Ms. Fullerton informed that she wanted to note that she wanted to present a copy of Mr. Prince Jr.'s petition to the court. It showed another means of trying to get around being in violation of the Zoning Ordinance. In the petition, Mr. Prince Jr. alleged that Mr. Smith installed a fence one foot onto his property. It would have required Mr. Smith to move his fence to accommodate the building that is in violation of the Code.

Ms. Fullerton informed that she submitted an open records request to receive information that would better inform the Board as to the history of the case and the purpose of why, Mr. Smith and Ms. Fullerton, believed that the variance should not be granted.

Member Jurica informed that the items that Ms. Fullerton was speaking on were not issues that the Board could address. The only item that could be addressed was the variance. Member Jurica informed that she understood what Ms. Fullerton was presenting and confirmed that the Board understood as well.

Ms. Fullerton informed that pertaining to the variance application, Mr. Smith began complaints in January about where the property lines were and the variance that Mr. Prince Jr. was seeking. According to the ordinance, an investigation should have been conducted for some findings or determinations in that regard. Ms. Fullerton informed that

the investigation never occurred. The only record that Ms. Fullerton had seen was in the packet for the current meeting that was dated for September. His, Mr. Smith's, complaint happened prior to that date.

Ms. Fullerton informed that it was only fair that the matter be postponed until such time when additional accurate information was presented for an informed determination. Otherwise, with violations being overlooked or condoned by the City, it was one more that could be added. Due to the problems that had occurred, and that Mr. Smith is continuing to incur as a result to the violations, that subjects the City to potential liability. Ms. Fullerton informed that they were asking that the matter be postponed until such time to receive additional information.

Board Member J.R. Atkins, asked if there was a possibility for both parties to gather in a reasonable amount of time to provide the Board with a survey that was agreed upon and more accurate.

Ms. Fullerton informed that they had the survey.

Member Atkins informed that it would need to be one that the Board could certify and both parties to sign before the Board could rule. The Board did not want to make a ruling, saying that it is a 6 inch variance that would be or not be granted to turn around and have the parties return, asking for another variance for the same 6 inches. Member Atkins asked if everyone could be brought to the point where one survey of both parties agreement.

Ms. Fullerton informed that she did not think that it would happen. It was attempted in court and that was why they were present for the variance request. As she indicated, the surveyors agreed that Mr. Smith's surveys, three / four surveys which are all the same, were accurate. At that point the lawsuit was dropped. Ms. Fullerton informed that she had a copy of the lawsuit that was filed for the current case.

Member Jurica asked the First Assistant City Attorney, Ms. Way, "Our purpose here is strictly the 5 ft. difference, correct?"

Ms. Way replied, "Correct, and to look at the standard."

Member Jurica asked, "Are there pending things happening in the City in regards to a commercial business on a residential lot?"

Ms. Way replied, "I wouldn't know. I don't work under, with Code."

Mr. Spriggs informed that regarding the question of the use was not on the table for discussion during the current time. The actual application for a garage applied to the standards. There have been individuals that tried to build accessory structures. Mr. Spriggs informed that some Cities have limitations on size in proximity to the main structure. In the City's Ordinances, there is an exclusionary clause for certain types of accessory structures such as garages. Sometimes there are granny cottages or pool houses. Those have an exception where the rules are not applied in terms of a certain size or height. Mr. Spriggs informed that in the current instance, that was applied to the particular application that he, Mr. Prince Jr., was building a garage to store antique cars. That type of use is weighed against the zoning.

Mr. Spriggs informed that typically, he as the administrative of the Zoning Code, would apply those standards. There were not any questions on the use that would be discussed during the current meeting. Mr. Spriggs wanted to make clear that those were the typical accessory structure requirements that would be applied.

Member Jurica asked, "And if we deny his variance, exactly what does that mean?"

Mr. Spriggs replied, "The question is the side setback. That is what you are entertaining, whether not that would cause undue hardship if you were to do such that, that's the decision of the Board to make."

Member Jurica asked, "What would happen if we do deny it?"

Mr. Spriggs asked, "If you deny his claim?"

Member Jurica replied, "What is the City going to do?"

Mr. Spriggs replied, "That saying that the setback requirement is not met, the structure would have to be corrected."

Member Jurica repeated, "The structure would have to be corrected."

Mr. Spriggs replied, "Yes ma'am."

Mr. Adams informed that it would have to be torn down.

Ms. Fullerton informed that she was not familiar with any of the exceptions that Mr. Spriggs had referenced. She did go through the Zoning Ordinance and not see any exceptions, other than what was specified in Section 7.2. It references exceptions under sections 4, 9 and 15. Ms. Way informed that those specific sections were not with her at the present time. While going through the sections, there were not any exceptions that applied to the presented structure on the residential property. It was not sure how Mr. Prince Jr. received permits to erect the building on that property.

Mr. Spriggs informed that he would repeat himself. The section that would be applied would be 9.2, accessory structures that are typically in residential zoned areas. Within the section are the particular requirements. Mr. Spriggs informed that if only an accessory storage building, a minimum square footage would apply and the height to not exceed 6 ft. Further into the section are the exclusionary exceptions that he described. Mr. Spriggs informed that the code is there.

Ms. Fullerton added that she did read that information. There is a 6 ft. limit as to height is intended to be an accessory, and not a primary structure on a residential lot. If it is read, the standards does not apply and does not allow for the building that is in violation to be accepted.

Mr. Adams informed that the bottom line was that Ms. Fullerton wanted to argue with Mr. Spriggs. He, Mr. Prince Jr., did everything that he was required to do. He passed all the inspections, spoke with the Building Inspector and he told him not to worry if it's off a few inches. Mr. Prince Jr. did everything by the book, he built the structure and there is not any showing of harm that a few inches is closer than it should be. Mr. Adams informed that if the building had to be torn down, he may spend \$120,000 to rebuild. Even if he could, \$40,000 was defiantly undue hardship. Mr. Adams informed that it was not showing any hardship to Mr. Smith. They, Mr. Smith and Ms. Fullerton, continued to want to address items that were outside the realm of the variance request.

Mr. Adams informed that in regard to Member Atkins' request about independent surveyor, they, Mr. Prince Jr. and Mr. Adams, offered it during the previous litigation. They, Mr. Smith and Ms. Fullerton, refused.

Ms. Fullerton informed that they did not refuse. The surveyors met at the Judge's urgent...

Ms. Way paused the testimony and informed that order was needed due to the controversy between the parties. The parties needed to wait upon the Vice Chair to recognize a speaker for the record.

Mr. Spriggs informed that others may wanted to speak.

Board Member Adrian Matteucci asked, "If we were to deny this application, technically the landowner / property owner rebuilds it at \$40,000, the same issue would still exist. One,

it's outside of our scope if this building may or may not be for commercial use. Is that basically..."

Ms. Way replied, "That is not something that we are here to consider. We're not even here to consider that today."

Member Matteucci informed that he understood and informed Mr. Smith, "You're basically asking us to deny this variance in a sense to sort of keep them from doing the commercial as well. If we deny the variance, it doesn't really solve the larger problems actually. That's where our lines are drawn. We can deny this and he may rebuild and you'll have the same problem over again. Do you understand that that could be the case?"

Ms. Fullerton informed that it would only occur if he, Mr. Prince Jr., submitted permits again and the City either overlooks or accepts incorrect information from him in order to grant those permits.

Member Matteucci informed that he understood and that it would not be the end of the line if the Board denied the variance.

Mr. Smith informed that from the beginning he, Mr. Prince Jr., knew he did not have a 5 ft. clearance. Mr. Smith informed that told Mr. Prince Jr. that he had a survey. The information that Mr. Prince Jr. provided the City was not correct. Mr. Prince Jr. provided a survey that showed that he had 5 ft. from Mr. Smith's fence. That alone was a deception. Mr. Prince Jr. informed that he was going to make the building fit, Mr. Smith's fence was one foot on his property and he was going to make Mr. Smith remove his fence and sue him for \$4,500.00.

Mr. Smith informed that they went to court. The Court informed that the surveyors needed to meet to produce a corrected survey. Mr. Smith informed that he made the payment, not Mr. Prince Jr. The surveyors produced a correct survey. After the corrected survey, Mr. Prince Jr. dropped the lawsuit.

Mr. Smith repeats, "He dropped the lawsuit when the survey was correct."

Mr. Smith informed that the exhaust over his home was a health problem. On his lower side of his screening, Mr. Smith could smell the exhaust when the cars in the building are running. There were chemical cans and the chemicals could be smelled. It is a health hazard not only for Mr. Smith, but also his grandchildren and everyone else. Mr. Smith informed that he has spent a lot of money from the time of speaking to Mr. Spriggs and all of the inspectors. It was not right.

Mr. Smith informed that he was against Mr. Prince Jr's variance request.

Mr. Smith repeats, "He knew he was wrong in the beginning. He submitted false information."

Mr. Smith informed that the City had the false information.

Mr. Smith repeats, "He has 5 ft. from my fence. Now he don't have that so he is trying to claim that he own some of my property, that I should tear my fence down."

Vice Chair Workman paused the testimony and stated, "That is really not what this is about. What he is actually saying is that there's a survey and he is less than 5 ft. closer to the property line than he should be. That is all he is asking is a variance for that, whatever it is, 6 inches or 1.5 foot, whatever it comes out to be."

Mr. Smith replied, "It's more than that involved because..."

Vice Chair Workman paused the testimony and replied, "No, I understand that there's more than that involved. The City, some group, I don't know which one it was, approved

the building of the building, and they approved all the environmental problems that are with the building. Either that has been brought up or should be brought up. All those things are out of our preview. All we can do right here is to talk about some small area, whether he is too close, whether that's really infringing on your property in a negative way."

Mr. Smith replied, "Yes it is sir, because I, the fact of the vent and stuff that's blowing all that mission right there across the fence. Ok, all of that with that building being too close..."

Vice Chair Workman asked Mr. Smith, "Would a 1.5 foot make any difference?"

Mr. Smith replied, "Yes."

Ms. Fullerton informed that it makes a difference due to it being his property. It didn't matter if it was an inch or 8 inches, it's his property that he purchased. To say that it could totally be disregarded and grant the variance because Mr. Prince Jr. spent all his money on a structure that should not be there in the first place, he managed to skirt around the ordinance provisions that would have prevented it from being built. Ms. Fullerton informed that this was the last straw to get the Board to allow the variance so that there would not be any other issues in the future.

Mr. Adams asked if he could respond briefly.

Mr. Adams informed that they were not taking any of Mr. Smith's property. He, Mr. Prince Jr., was just a little closer to his property. The fence was still on his property line. They did not have any exhaust coming out of the building. It was not hurting anyone.

Mr. Adams asked Mr. Prince Jr., "Did you know, as he's indicated, when you started this thin that you were closer than 5 ft.?"

Mr. Prince Jr. replied, "No."

Ms. Fullerton informed that Mr. Spriggs visited the site on one occasion when there was exhaust blowing from the vent on to Mr. Smith's property.

Vice Chair Workman asked Mr. Spriggs if he could address the statement.

Mr. Spriggs informed that when the original complaint was verbalized to staff, they did not act on it due to its pending litigations. Staff was advised to wait until a decision was rendered on the line in questions. Once the case was dropped, staff scheduled a site visit. Mr. Spriggs informed that as he stated earlier, Code Enforcement, Building Division and he went to the site and in the structure. They saw the antique cars in the structure and the vent hood. The vent hood was turned on, but no cars were running at the time. He did not experience the fumes, because at that time, what they were inspecting was the magnitude of what the air flow would be when the vent was turned on. This was after the submission of the official complaint once the court was dropped.

Mr. Spriggs informed that that was the only visit that he conducted on the property and in the structure itself.

Member Jurica asked Mr. Prince Jr., "Mr. Prince, do you paint cars in there?"

Mr. Prince Jr. did not hear the question.

Member Jurica repeated the question.

Mr. Prince Jr. replied, "No ma'am. And there is no paint booth, sand blasting as he indicated, anything in my structure. Actually unannounced Mr. Spriggs and Mr. Allen were there in December..."

Mr. Spriggs corrected, "That was November the 8th."

Mr. Prince Jr. continued, "...allowed them to go in my..."

Mr. Spriggs completed the information by stating, "...of 2018. November 8, 2018"
Mr. Prince Jr. continued, "...and they viewed inside my building and there's no paint booth. There's no vehicle restoration going on. There's no sand blasting going on inside the building. I do start the vehicles on occasion, yes."

Mr. Adams informed that Mr. Smith's attorney filed a motion to dismiss due to the case needing to be in District Court. Mr. Prince Jr. filed the case in JP, Justice of the Peace, Court prior to him getting involved. Mr. Adams informed that he agreed with Ms. Fullerton and that was why the case was dismissed.

Ms. Fullerton informed that before the motion was sent to nonsuit, Mr. Adams called her office and they spoke. Mr. Adams specifically said that he understood and that the surveyors had met and agreed that the survey was correct. Mr. Prince Jr. did not want to pursue the matter any further.

Mr. Adams informed that he did not know if he could object. He did not think that it was appropriate that an attorney could talk about what another attorney legally said during the course of litigation.

Ms. Way addressed Vice Chair Workman and informed that the testimonies given did not have anything to do with variance. The question was about the variance. The standard was to authorize specific variances from the terms of the Zoning Ordinance. If the variance is not contrary to public interest, then due to special conditions, law enforcement of the ordinance will resort to unnecessary hardship and so that the spirit of the ordinance is observed and the substantial justice is done.

Ms. Way informed that the question of the survey was only a matter of how much of a variance was needed. That was the only barring it had presently. Should the Board decide to grant or not grant the variance, the only effect was how much of a variance was given.

Mr. Smith informed that the presented photo showed chemicals that were being used at the time Mr. Smith had a lot of chemicals on the side of his property. He went around to see about the fumes.

Mr. Smith informed that it was a hardship to him and his health.

Mr. Smith repeated his statements of the exhaust, fumes and that Mr. Prince Jr. knew about the 5 ft. issue.

Member Matteucci asked, "Is there a formal City process for use? In other words, like we are here to discuss the variance, but there seems to be a use issue as well outside of our scope. Now is there a separate process for that type of issue as well?"

Ms. Way replied, "Do you mean to change the use?"

Member Matteucci replied, "No, no. If there's a dispute of the use."

Ms. Way replied, "The questions of enforcement. So we have an enforcement team and the proper channel is through our enforcement team."

Member Matteucci asked, "Are there other avenues if there is a use issue..."

Ms. Way replied, "Correct."

Member Matteucci replied, "Beyond what we are doing here."

Ms. Way replied, "Correct."

Member Matteucci replied, "Because there seems to be two problems. One is the variance setback and the other is the use. And obviously we can't act."

Member Jurica informed Mr. Smith, "I suggest you contact your Councilman person."

Mr. Smith replied, "Yes ma'am. We are going to do that also. But, like is say, he knew..."

Member Jurica paused the testimony and informed that the Board could not address the other issues.

Ms. Fullerton informed that they would not continue to labor the points. However, due to Mr. Smith just receiving notice, in their response, they did begin to address the other issues and asked if an investigation could take place. Ms. Fullerton informed that all they were asking was that variance request could be postponed until the other need information was received to make an informed decision. This was in opposed to hearing verbal positions from the parties.

Member Atkins informed that the other information would not have barring on the variance issue itself. He partly would have like to postpone the variance request until other issues were settled. He was not sure how much good that would have been. Member Atkins informed that if they denied the variance, then the building may have to come down and the use issue still remained. If the Board waited and there was settlement on the use, then they still would not be happy that the building would be encroaching on the 5 ft.

Member Atkins informed that by having the extra information, he was not sure. The other issues were outside of the Board's scope.

Ms. Way informed that the Board could not even consider the issue due that it was a matter of law. The other issues could not be considered.

Member Atkins asked, "Are the other issues pertinent to the distance?"

Ms. Fullerton replied, "Yes. In our request, we asked for all applications, permits everything that would pertain to this variance as well. Because we didn't get any information, Mr. Smith didn't even know that this was being addressed until he got the notice of the meeting today. I believe the notice is dated like the 17th. He actually got it last week."

Member Atkins asked, "How do you envision getting that information would affect what we would be able to decide upon?"

Ms. Fullerton replied, "Well, I can't tell you what's in it. But I think if there are other applications... For one thing you heard different stories and haven't been involved in the litigation to know that all of what you heard is not true. If there are other documents that show that there is some discrepancy in the request that was made to obtain this variance, then that's something that pertinent to whether or not you determine if it would be in anybody's best interest to grant it.

Member Atkins asked, "If the Board was able to obtain holding the matter for advisement, how long would you envision it would take to get this information?"

Ms. Fullerton replied, "They got ten days to respond to the Open Records Request, which was submitted today."

Vice Chair Workman informed that that it involved all the issues that were being discussed.

Ms. Fullerton informed that it included the variance applications as well. The request included any and everything that pertained to the property as in permits, inspections

anything that pertained to Mr. Prince Jr's property.

Ms. Fullerton informed that if there were different or varying requests that were made, or determinations and denials, they did not have that information. All of that information should be produced in response to their Open Records Requests. Ms. Fullerton informed that she did not think it was unreasonable to ask and wait ten days."

Member Atkins informed that that was not why the Board was currently present. They were only there to say whether or not a building that had been built, where it was currently, had a cost so great that it was worth someone spending \$40,000 to \$ 120,000 to move it or have it removed.

Member Atkins informed that the Board was not present to hear everything out that would not have any bearing on what the Board could decide.

Ms. Fullerton informed that it should. Mr. Smith being a resident of Missouri City, if the fumes were in fact toxic and harmful to him, then what liability would be on the City if the variance were to be granted.

Member Atkins informed that Ms. Fullerton was a lawyer and that they all knew how it worked. The Board's current position was to hear what was on the agenda. What was being discussed was noticed to the public and only about a variance and not anything else.

Ms. Fullerton informed that they opposed the variance.

Ms. Fullerton repeated the request to postpone the variance request.

Vice Chair Workman informed that if there were health hazards, it was an issue that may alter how he, Mr. Prince Jr., used the building in the future. It did not alter the fact if a variance was given to the position of the building.

Ms. Fullerton informed that she only made the reference due to the Board saying that if the variance was denied, the building may need to be removed that cost \$40,000. If cost and effect was being discussed, then it could not be viewed from the perspective of only one party without consideration of the other party.

Member Atkins informed that what the Board was actually allowed to decide was stated.

Ms. Way informed that it was the hardship.

Member Atkins informed that the Board was just reviewing "A" and "B", a building that was closer to Mr. Smith's property than it should have been. It was built through the process of the City. There were other complaints with the City, Departments and other matters that the Board does not have control nor could they discuss based on the agenda.

Member Atkins informed that when taking everything into consideration, the Board had to decide if it was a big enough burden that it was worth \$40,000 to \$120,000 after the building had already been built. Member Atkins informed that unfortunately it did not consider what it was and was not worth towards Mr. Smith.

Ms. Way informed that there were other elements that were not contrary to the public's interest due to special conditions and literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.

Mr. Smith repeated his statements of Mr. Prince Jr. knowing that he did not have the space, along with the property and fence issue.

Mr. Atkins informed that he imagined that it was awful from Mr. Smith's side to be going

through the situation. He was not saying that Mr. Smith was wrong. The Board's current position was purely about whether a variance was made to allow to make up the 8 inches.

Mr. Atkins informed that he heard what was said and he thought they, Mr. Smith, should pursue. It was not the current venue for the other issues.

Mr. Smith informed that he was aware and went on to state that the Board should not grant the variance due to the violation.

Mr. Smith repeated his statements about Mr. Prince Jr. providing false information, objection of the variance and his out of pocket cost due to the matter.

Vice Chair Workman informed that he understood and that the documentation that the Board had been given supported what Mr. Prince Jr. had stated. The Board did not have information that stated Mr. Prince Jr. knew about the issue prior. Mr. Prince Jr. was not aware of the issue until the slab was poured.

Mr. Smith informed that that was not true. Mr. Spriggs had information that showed Mr. Prince Jr. did submit the wrong information. That was the purpose of the Open Records Request to have the documents presented.

Mr. Spriggs informed that there was no question that a document was submitted that showed the property to be 176.4 ft. x 120 ft. The property went through a Pre-Development Meeting with a platting process. A surveyor did submit a plat that was approved of that particular size of the property.

Mr. Spriggs informed that at the time of permitting, which was the next step, a document was provided that showed a setback of 5 ft. The rear did not satisfy the original 8 ft. requirements. That was corrected. Mr. Spriggs informed that staff did have the drawing.

The drawing that showed the 5 ft., was presented to the Board via a monitor.

Mr. Spriggs informed that a document was provided for the side yard setback. It was the original document that showed the 5 ft. that the Inspectors would have reviewed with the application for a building permit. Mr. Spriggs informed that that was typically required for a permit.

Mr. Spriggs informed that in terms of the field work, typically property stakes are dealt with and that was where discrepancies may happen due to a survey not matching.

Ms. Fullerton informed that respectfully that is why they were asking for the postponement. With Mr. Smith making the statement, they would not have known that there were other documents that the Board did not receive.

Vice Chair Workman informed that they heard it all and asked if anyone on the Board had any other comments.

Member Matteucci asked Mr. Smith, "You're inserting bad faith on the other party's part and that is why we are presuming waiting to hold anything over so that you can look at whatever documents were filed and potentially come back here and say this was in bad faith?"

Ms. Fullerton replied, "The other thing is, and I would like to speak for Mr. Smith in that regard since I believe that that in part is a legal question, the other thing is that there is other information that you may not have in your packet, which I don't believe you do if what I saw initially presented, did not include this one document that existed. There are documents that Mr. Smith has presented to Mr. Spriggs that you don't have. There is information and discussions that he had you don't have privy to. So I'm just saying, I prefer you have the whole story."

Vice Chair Workman informed that he wanted to give the applicant one more time to speak before closing.

Mr. Prince Jr. stated, "I did not know that I wasn't meeting the 5 ft. And the City had the plans which shows the building to be 95 ft. And on end there's a 20 ft. setback. On the other end there's 5 ft. Those three dimensions add up to be 120 ft. So there was nothing for me to know that wasn't correct. Until we found out that the land was not quite square."

Vice Chair Workman asked if there was anyone else who would like speak to please step forward and to provide their name and where they lived.

Daryl Smith Jr., neighbor next to his dad Daryl Smith, informed, "That when the original surveyor was out, I was actually at the house. So when I came out, they were in the middle, his survey company was actually in the middle of the driveway. So when I picked up the phone, I was like, 'Hey dad. Listen. I don't know what you have going on. You got some survey people out here.' It's in the middle of the driveway. They were trying to place the pins to the middle of the driveway to make the actual 5 ft. fit, when the original pins were actually in the ground. So when my dad actually showed them that the original pins was in the ground, you actually don't have the proper feet for the actual building. I mean, that was stated several times 'cause we were all actually outside. The difference of the 1.5 foot variance would make an actual difference if it wasn't there. That actually means that the blowers, 'cause when they do actually cut them on, blows right over the fence. But with that foot, it would actually shorten up to where it wouldn't blow directly over his fence. So you're looking at that 8 inches as no joke. It's not actually 8 inches where the vent fan is. It's actually more like a 1.5 ft. to a little bit more that would change the angle of where they're blowing. Potentially maybe put a hood on it to where it blows it down to potentially his ground could solve everything. But it was stated before that they were going back and forth about there wasn't enough room. The original pins was actually there. I am saying no to the variance for the simple fact that it does blow over and our kids actually do go to grandpa's house all the time and play on the side and ride their go-carts and things like that. Yes it does cause an issue, but potentially and hopefully there's a way. It is not correct on that side."

Crystal Tyler, 2514 Stillwell St, informed, "I am the third house around. The only thing that I do have to say is because we don't have a HOA, we have to follow the rules. What y'all's City tells us to do. If I want to build a fence, I have to make sure I comply with the rules. It does not matter if paid for an iron fence and I had it ordered, I have to follow the rules. That's my personal money that I came out of, I spent. But if y'all tell me that it's wrong, I'm out of pocket. And that's the rule with everything. If I choose to build a pool, and I buy a big pool and it's 12 ft., I'm only allowed 9 ft., I ordered the wrong thing. I did wrong, so I have to fix it regardless if I came out of money. So just because he came and he spent \$120,000, that's his fault. He knew what was wrong and he knew what was right. In that error they told him, '...well, yes. You know it's wrong the 5 ft. ...' or 5 inches, whatever, then you could have went back and said, 'ok, lets rebuild this area'. Not the whole building. But, 'Lets order the parts that we need to fix this.' You might lose a couple of thousands, but guess what, you didn't do the right measurements. That's what happens. You order the wrong size clothes, you gotta buy another set of clothes. It's just that simple."

Vice Chair Workman asked the Board if they should postpone or approve.

Ms. Way informed that the Board needed to present a motion.

Motion: To hold the matter of agenda item 6A. under advisement until a later date to be determined by staff at the appropriate time.

Made by: Board Member Matteucci
Seconded: Board Member Jurica

Member Matteucci asked for a discussion.

Vice Chair Workman granted.

Member Matteucci informed that if they did postpone the matter, at the request of Mr. Smith, they, Mr. Smith, wanted to present information to the Board. It was a large hill to climb in a sense due to the Board not being allowed to consider anything that pertained to the use. They were speaking about discussing the potential lack of good faith. That would be a really narrow scope of discussion. If the Board did postpone and they, the parties, came back, the Board would not need to discuss the current process. The Board had heard the same testimonies repeatedly for an hour and a half.

Mr. Matteucci informed that he only wanted to hear new information within the ordinance. If the party could not meet that burden, then the Board would return back to only discuss the variance during the current meeting.

Member Jurica informed that she was reading that four votes were needed and informed that she was going to deny it, the variance.

Member Jurica informed that the Board was not going to receive the votes it would need. If the Board wanted to move further, the Board needed to postpone the variance request.

Staff informed that a specific date was needed.

Member Matteucci informed that Mr. Smith's attorney stated ten days for the Open Records Request and suggested the 28th of February.

Member Jurica informed that that was not enough time.

Member Atkins agreed.

Member Jurica informed that she would like to have a variance presented once Mr. Prince Jr. resolved the other issues.

Mr. Spriggs informed that that was a broad statement due to stating, '...other issues resolved.'

Ms. Way informed that the other issues would not affect the Board's decision.

Member Jurica informed that they should not.

Ms. Way informed that it was the Board's choice of date. However, a reasonable date.

Member Atkins asked for the last date in March.

Mr. Spriggs replied, "March 27th, or February 27th."

Member Matteucci asked to have his motion amended to mention March 27th.

Motion: To hold the matter of agenda item 6A. under advisement until March 27, 2019.

Made by: Board Member Matteucci

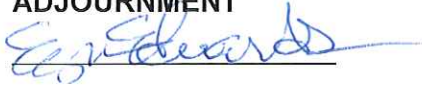
Seconded: Board Member Atkins

AYES: Board Member Workman, Board Member Jurica,
Board Member Atkins, Board Member Matteucci

NAYS: None

The motion passed.

ADJOURNMENT



Egima Edwards
Planning Technician

